



# Piping Plover Critical Habitat

## Proposed Wintering Designation

### Frequently Asked Questions

*Updated: June 29, 2000*

#### **Q1 - Are data sufficient to designate critical habitat?**

A1 - Section 4(b)(2) of the Act states “The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available . . .” We solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. We used data on known piping plover wintering locations. Sources of data providing these locations include two international piping plover censuses carried out in January of 1991 and 1996, published reports, Christmas Bird Counts, and other data from surveys focusing on shorebird distribution and abundance. Areas that were identified in the approved recovery plans and current draft recovery plans as essential for the recovery of the species were also used to initially identify important areas. Densities of birds throughout the wintering range varied considerably, but an effort was made to insure that sufficient habitat was available for conservation of the species throughout a broad geographic coverage. We agree that much remains to be learned about this species, and should credible, new information become available which contradicts the basis for this designation, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. We have considered the best scientific information available at this time, as required by the Act.

#### **Q2 - What methods were used to designate critical habitat?**

A2 - Using the best scientific data available, we identified areas along the coast for which occurrence data indicated a consistent use by piping plovers and included them as units in the proposed designation. In some cases these areas may be used by small numbers of plovers, but these areas are important for the birds using that portion of the broad geographic range. It is important to recognize that piping plovers migrate from breeding sites distributed over a broad geographic range, and are dependant on wintering sites distributed over an equally broad area. Areas identified in piping plover recovery plans as essential to the species’ recovery were also considered in designating critical habitat. In some areas, adequate census data are not available to provide reliable presence or absence information for the plover. These areas are in remote locations where censuses are logistically difficult. However, the physical and biological features essential to piping plovers are known to be present in these dynamic areas, and our belief that these areas support piping plovers is biologically sound. Thus, we consider all areas proposed for designation to be essential to the conservation of the species.

Critical habitat boundaries delineate areas on a map. The habitats upon which wintering piping plovers depend occur within a highly dynamic coastal system where the effects of erosion and accretion dominate the landscape. It is difficult to effectively capture such a rapidly changing landscape on a static map. Given the highly dynamic nature of these coastal land forms, we delineated areas of sufficient size to capture expected shoreline movements.

### **Q3 - What is consistent use?**

A3 - We considered sites to have consistent use if piping plovers were repeatedly seen at the site over the years. The duration and frequency of piping plover censuses varies. For some areas, data is available to confirm annual use of the site. In other areas, plovers were censused less frequently, but repeated observations at longer intervals confirmed consistent use.

### **Q4 - What protection do the piping plovers have under the Migratory Bird Treaty Act?**

A4 - Piping plovers are migratory birds and are thus protected under the the Migratory Bird Treaty Act (MBTA). The MBTA makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird, including feathers, parts, nests, or eggs. The MBTA provides overlapping protection with the Endangered Species Act (ESA) for a listed endangered or threatened bird species, but it also extends that protection should recovery goals be met and the species is delisted under the ESA.

### **Q5 - What are the constituent elements for the wintering birds?**

A5 - The primary constituent elements essential for the conservation of wintering piping plovers are those habitat components which support foraging, roosting, and sheltering, or have the capacity, through natural processes, to develop those habitat components. The primary constituent elements are found in geologically dynamic coastal areas that support or have the potential to support intertidal beaches and flats (between annual low tide and annual high tide) and associated dune systems and flats above annual high tide. Important components of intertidal flats include sand and/or mud flats with no or very sparse emergent vegetation. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

These constituent elements are a result of the dynamic geological processes that dominate coastal landforms throughout the wintering range of piping plovers. The integrity of the primary constituent elements depends upon daily tidal events, regular sediment transport processes, as well as the episodic, high-magnitude storm events, all of which are associated with the formation and movement of barrier islands, inlets, and other coastal landforms. By their nature, these features are in a constant state of change, and are therefore difficult to accurately delineate in perpetuity on a static map. Given that piping plovers evolved in this dynamic system, and that they are dependent upon the ever-changing features within broad areas for their continued survival and eventual recovery, critical habitat boundaries may include broader areas than those currently used by wintering piping plovers in order to capture sites which may develop appropriate habitat components in the future.

### **Q6 -Is my property included in this designation?**

A6 - We did not map critical habitat in sufficient detail to exclude all currently developed areas such as towns, housing developments, marinas, paved areas, boat ramps, structures, lawns, and other lands unlikely to contain primary constituent elements essential for piping plover conservation. Within the delineated critical habitat boundaries, only lands that contain or could develop the primary constituent elements described above are proposed for critical habitat designation and protection under section 7 of the Act.

The proposed rule contains maps and the required legal descriptions of areas designated as critical habitat. The accompanying maps are for illustration purposes. For additional clarification to determine whether your

property is within proposed critical habitat boundaries, contact the U.S. Fish and Wildlife Service, Ecological Services Field Office within your state. We identified specific areas referenced by specific legal description, roads, waterways, and other landmarks, which are found on standard topographic maps, as required by our regulations at 50 CFR 424.12.

**Q7 - What is the extent of the additional consultation burden? To the federal agency? To a permit applicant?**

A7 - Federal agencies are already required to consult with us under the ESA whenever a proposed action might impact a listed species. Thus the designation of critical habitat will add very little additional consultation burden to either the Federal agency or the permit applicant.

**Q8 - Will the critical habitat designation delay Federal decisions on permits or funding?**

A8 - No. Designation of critical habitat for wintering piping plovers notifies the Army Corps of Engineers, other permitting agencies, and the public that Clean Water Act section 404 nationwide permits and other authorizations for activities within these designated critical habitat areas must comply with section 7 consultation requirements. For each section 7 consultation, we already review the direct and indirect effects of the proposed projects on piping plovers, and will continue to do so for critical habitat if it is designated.

**Q9 - How will beach renourishment projects be affected?**

A9 - This proposed rule, if made final, would not result in additional review requirements under section 7 of the ESA. For each section 7 consultation, including beach renourishment, we already review the direct and indirect effects of the proposed projects on piping plovers, and will continue to do so for critical habitat if it is designated.

**Q10 - What exactly is excluded from the critical habitat?**

A10 - Areas where the primary constituent elements are not currently present and are not likely to ever occur. There are many areas within piping plover critical habitat boundaries that do not contain the constituent elements and are not considered critical habitat. For example, existing structures such as buildings, roads, parking lots, and piers are not considered critical habitat. We may also exclude areas as critical habitat upon an economic assessment that determines the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

**Q11 - Why is the critical habitat designation such a broad geographic range? Doesn't the ESA state that the entire historic range will not be designated?**

A11 - While proposed critical habitat for piping plovers occurs throughout the entire wintering range of piping plovers, not all areas within the range are being proposed as critical habitat.

In this case only those areas along the coast for which occurrence data indicate a consistent use by piping plovers were included as units in the proposed designation. In some cases these areas may be used by small numbers of plovers, but the areas proved to be important for the birds using that portion of the broad geographic range. In some areas, adequate census data are not available to provide reliable presence or absence information for the plover. These areas are in remote locations where censuses are logistically difficult. However, the physical and biological features essential to piping plovers are known to be at least sporadically present in these dynamic areas, and our belief that these areas support piping plovers when essential habitat features are present is biologically sound.

In addition, piping plovers are known to change their areas of use with changes in tides and weather, further lending credence to the belief that these areas are at least occasionally used by the species. Thus, we consider the areas essential to the conservation of the species.

**Q12 - Isn't an Environmental Impact Study (EIS) required?**

A12 - We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244).

**Q13 - Is wintering habitat limiting for the piping plover?**

A13 - Currently, wintering habitat may not be limiting as birds can be seen foraging on many beaches during certain times of the year, but in the face of current and foreseeable continued coastal development and increased recreational use, suitable habitat becomes more limiting each year. Therefore, we have chosen the areas that have consistent use and best meet the biological and physiological needs of the species. Adult survivorship over the wintering period plays a significant role in maintaining current populations and in accomplishing increases in population levels required to achieve recovery. Critical habitat is designated to identify areas essential to the conservation of the species, including identifying sufficient habitat to achieve recovery and eventual delisting.